

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
SEVENTEENTH REGION**

HWA CONTRACT SERVICES, INC.

Employer-Petitioner

and

Case 17-UC-241

**INTERNATIONAL UNION, SECURITY,
POLICE AND FIRE PROFESSIONALS
OF AMERICA, (SPFPA)**

Union

DECISION, ORDER AND CLARIFICATION OF BARGAINING UNIT

The Employer-Petitioner, HWA Contract Services, Inc., operates a guard service from its facility located in Seattle, Washington, and provides guards to the Harry S. Truman Library and Museum in Independence, Missouri, the facility involved in this case. The Union, International Union, Security, Police and Fire Professionals of America, (SPFPA) represents a unit of approximately 23 guards employed by the Employer-Petitioner at the Truman Library facility.

The Employer-Petitioner seeks to clarify the bargaining unit by excluding its four shift supervisors, contending that they are supervisors within the meaning of Section 2(11) of the Act. Contrary to the Employer-Petitioner, the Union asserts that the shift supervisors do not have authority to exercise the supervisory functions enumerated in the Act. Moreover, it asserts that the petition is untimely because an election was held on September 24, 2001, in which all shift supervisors voted without challenge. Further, there has been no material or substantial change in the position in question since the

election, or the subsequent negotiation of a collective-bargaining agreement, which is effective by its terms from February 1, 2002 through January 31, 2005.

During the hearing, the status of a part-time acting on-site supervisor, Robin Wycoff, was raised as an issue. Although the Employer-Petitioner maintained at that time that he was not a supervisor, subsequently the Employer-Petitioner agreed with the Union that Wycoff should be excluded from the unit as a statutory supervisor.

THE DETERMINATION

For the reasons discussed below, I find that the Employer-Petitioner failed to meet its burden of establishing that shift supervisors are statutory supervisors who should be excluded from the unit. I also find that the Union, with the agreement of the Employer-Petitioner, has met its burden of establishing that part-time acting on-site supervisor Robin Wycoff should be excluded from the unit as a supervisor. Finally, I find that unit clarification as to exclusion of the shift supervisors is inappropriate, but that unit should be clarified to exclude Robin Wycoff.

1. Shift Supervisors

a. The Facts

The Employer-Petitioner provides guard service at the Truman Library, which is a presidential museum and library. It successfully bid for a contract with the Federal government to supply the service starting in December 2000.

Approximately 25 individuals are employed by the Employer-Petitioner at the Truman Library, including an on-site supervisor, a part-time acting on-site supervisor, 4 shift supervisors, and 10 full-time and 9 part-time security officers.

The security operations involve 24 hour a day, 7 day a week coverage. A dispatcher operates a radio for communications with officers positioned throughout the Truman library and grounds. In addition, monitors are located in the dispatch office for viewing critical locations.

The Truman Library is open to the public until 5 p.m. on all days except Thursday, when it is open until 9 p.m. The security guards work at various posts, and rotate every 30 minutes throughout the workday based upon a schedule prepared by the dispatcher. Their duties involve securing all areas of the facility.

The Federal government maintains a presence at the Truman Library through a contracting officer representative, Carol Banes. Her role is to assure that the Employer-Petitioner fulfills its obligations under the government contract.

The Employer-Petitioner's on-site supervisor, Michael Aspey, is in charge of the operations. He testified that he maintains the working schedule, hires, fires, disciplines, and writes and enforces procedures and policies. The four shift supervisors report to him. The shift supervisors are Wylie Johnson, Larry Juliana, Jay Lawson and Joel Pasley. Below the shift supervisors are the security officers assigned to particular posts.

On-site supervisor Aspey works the day shift from 7 a.m. to 3 or 4 p.m.. None of the shift supervisors are normally on duty when Aspey is working. Juliana and Pasley primarily work the evening shift, while Johnson and Lawson work the midnight shift.

The shift supervisors spend most of their work days in the dispatch area, manning the radio, monitoring the TV monitors, and answering the telephone. They also conduct a 15 to 30 minute walk through the various checkpoints in the Truman Library during the evening shift.

The Employer-Petitioner and the Federal government are parties to a contract which sets forth various duties for “Lead or Senior guards,” terms synonymous with shift supervisors. Thus, the security officers are “responsible directly to the on-duty shift supervisor and will follow his/her directions, instructions and orders in all duty-related matters.” The government contract also provides that “in an emergency when the contracting officer representative (COR) is not available, the on-site supervisor or shift supervisor shall divert uniformed personnel from their normal assigned duties to meet the condition and summon appropriate assistance as may be required in the Occupational Emergency Plan.” Further, it states that “the shift supervisor will be in charge of all major emergencies or events which occur on his/her shift.”

The government contract states that shift supervisors will issue equipment to the officers and maintain an inventory of such equipment, and will “be responsible for equipment inventory accountability through proper record maintenance.”

Further, the government contract states that shift supervisors, at their discretion, should conduct roving patrols of the facility and grounds, and inspect for hazards and proper performance by their subordinates. They are to correct deficiencies and prepare an in-depth written account of any incident for the on-site supervisor. The government contract states that shift supervisors are responsible for assuring that their subordinates do not leave the facility during their tour of duty.

Finally, the government contract provides that shift supervisors “will be held responsible and accountable for enforcing all rules and regulations and policies of the government.”

On-site supervisor Michael Aspey testified concerning the duties of shift supervisors. He stated that they do the same things as security officers but are responsible to make sure that the employees below them do their job assignments. They are responsible for all security for the facility. Aspey testified that shift supervisors can change schedules and transfer employees. The specific example given involved a former employee named John Bush.

Aspey stated that Bush called in sick and advised then-shift supervisor Gary Ahern concerning his health. On Sunday, February 24, 2002, Bush informed Ahern that he had been in the hospital since February 22 and would not be available for his regular tour of duty. He informed the shift supervisor that he thought he had mistakenly thought he had a heart attack. Ahern replaced Bush on the shifts in question.

Aspey also testified that a shift supervisor transferred Bush from one post to another, and that was the only time that he could recall an employee was transferred.

Aspey testified that shift supervisors walk around the facility on the evening shift and sign a checklist indicating that they have checked various locations in the Truman Library and grounds.

Former shift supervisor Gary Ahern testified that he worked in the position until May 30, 2002. He stated that he was not given a job description and was told by Aspey that he could not be given a copy of the government contract when he requested it.

Ahern stated that his training for the shift supervisor position consisted of spending six hours with an acting supervisor who showed him how to monitor alarms. He testified that security officers were originally assigned to particular posts but the

system has changed to rotation through the posts every 30 minutes. Ahern stated that the dispatcher, a unit position, made up the schedule for rotation.

Ahern testified that, as a shift supervisor, he was responsible for checking that guards were dressed properly and performed their duties adequately. He stated that he never corrected an employee concerning either subject.

Ahern stated that when he replaced former officer Bush, he followed a procedure of contacting whomever was available to work to cover the post. He stated that the requirement to contact officers by seniority under the collective-bargaining agreement was not in effect at the time of Bush's absence.

Ahern testified that on a typical day he monitored three television screens, answered the telephone, and took action if an alarm went off. He stated that he had very little contact with security officers except when he asked for relief to go to the bathroom or to lunch. He recalled that the only time he directed employees was if there was a special event at the Truman Library, and that direction consisted of asking whether people had any special needs, and advising the officers what those needs were.

Ahern testified that employees fill out a log each day when they come in to work, recording the time they report, the serial number of their firearm, the number of keys that they take, how many bullets they have for their weapons, their badge numbers and their radio. The officers sign the form showing that they have received the items, and the shift supervisor signs the log showing that the officers have taken the items.

Shift supervisor Larry Juliana testified during the hearing. He stated that if overtime was required he would have to contact on-site supervisor Aspey to authorize it,

and that the occasion only arose two or three times. He testified that the rotation system for guard posts came into effect after collective-bargaining negotiations.

Juliana stated that he has the authority to listen to grievances or accept them in writing but, if that happened, he would forward them to the on-site supervisor. However, he did not recall that ever happening.

Juliana testified concerning one incident in which an employee was reprimanded. He recalled that an officer named Lee Brooks left his position early on one occasion. He filled out a generic form and discussed the situation with Aspey. He stated that Aspey gave the employee an oral reprimand. However, Juliana was not present when the reprimand was given.

Juliana testified concerning the equipment roster described by shift supervisor Ahern. He stated that the purpose of the document was to insure that employees returned the items they checked out. He testified that if someone called in sick, he would check a list to see who was available. He added that since the Union has been in place, the employees are called in by seniority.

Juliana testified that he has had contact with the contracting officer representative, Carol Banes. This happened when a water leak or electrical problem occurred. He called Banes to tell her about the problem so that she could get it repaired.

According to Juliana his typical day involves walking through the building to make sure everything is secure and then taking over the dispatcher's duties, monitoring the telephones and alarms. He stated that he has very little contact with the security officers.

Juliana stated that he has not transferred anyone or recommended anyone for a commendation. If an employee became ill on the shift the employee would report to Juliana, who would handle the situation without being required to contact the on-site supervisor. If an employee wanted to switch shifts, Aspey would have to be contacted.

Juliana testified that one to five employees work under him and assignments are made pursuant to a monthly schedule prepared by the dispatcher. He stated that if an event is going on and he needs an extra officer, he will contact the roving officer, a person who handles assignments like receiving a delivery during the shift.

He testified that a log book is kept by the shift supervisors to enter, for example, a caterer's delivery to the Library. The log book is given to Aspey who maintains it. Juliana testified that he feels that he is a supervisor when a special event is going on and he contacts a roving officer to cover a door or other assignment. He stated that that happens infrequently.

It is uncontroverted that shift supervisors do not have the authority to hire or fire employees. They have not recommended discipline of employees except for the single incident described by shift supervisor Juliana. They receive the same benefits as security officers except for a 30 cent per hour premium. They wear the same uniforms as security officers. They do not evaluate security officers. Both shift supervisors and security officers can recommend commendations for employees. Recommendations for hire can be made by both shift supervisors and security officers.

b. The Employer-Petitioner's Position

The Employer-Petitioner lists seven specific duties which it contends establishes that shift supervisors are statutory supervisors: 1) shift supervisors change work

schedules; 2) shift supervisors make work assignments; 3) shift supervisors distribute equipment; 4) shift supervisors oversee the work performance of security officers; 5) shift supervisors recommend discipline; 6) shift supervisors attend management meetings; and 7) shift supervisors implement the government contract.

The Employer-Petitioner maintains that if a security officer was unable to work due to illness, the shift supervisor would contact other employees in order of seniority and assign them to cover a shift. The shift supervisor would record the change in a work schedule kept behind a locked glass case. The Employer-Petitioner's specific example of this duty involved former employee Bush, who was replaced by security officers assigned by shift supervisor Gary Ahern.

The Employer-Petitioner asserts that the shift supervisors assign employees to cover the dispatch office, and transfer officers from post to post when the officer has a physical limitation which prohibits him from manning his post. Once again, the specific example cited is employee Bush's February incident which resulted in shift supervisor Ahern placing Bush on a different post due to Bush's disabling medical condition.

The Employer-Petitioner contends that shift supervisors distribute firearms, facility keys, bullets, radios, and badges to security officers when they report to work. It notes that shift supervisors complete forms showing which equipment has been issued to the security officers.

The Employer-Petitioner asserts that shift supervisors are responsible for reviewing and ensuring that the security officers perform their duties adequately. The

Employer notes that shift supervisors walk around the Truman Library each night completing a checklist, noting that the building is adequately secured.

The Employer-Petitioner asserts that shift supervisors have the authority to recommend discipline, and if a situation arose, they would deal with it. It concedes that this has rarely happened and points to the one incident in which shift supervisor Juliana reported an employee for leaving his post early.

The Employer-Petitioner states that when the government contract was initially in place, senior contract manager Michael Finley held supervisory meetings with shift supervisors. It notes that such meetings have not taken place since September 11, 2001, due to the high security alert at Federal buildings.

With regard to implementing the government contract, the Employer-Petitioner asserts that shift supervisors speak directly with the contracting officer representative, Carol Banes, concerning facility problems. It contends that the shift supervisors' exercise of these duties reflects their independent judgment and their ability to responsibly direct the employees.

. The Employer-Petitioner also asserts that the shift supervisors satisfy several secondary criteria of supervisory status, which establishes that they are statutory supervisors. Thus, the shift supervisors earn 30 cents more per hour than security officers. Further, the shift supervisors consider themselves to be supervisors. Finally, the Employer contends that shift supervisors must be statutory supervisors or an unreasonable ratio of employees to supervisors would exist. It notes that the on-site supervisor is not present for the shifts worked by shift supervisors.

c. The Union's Position

The Union asserts that the shift supervisors are not statutory supervisors. With regard to the government contract relied upon by the Employer-Petitioner, the Union contends that none of the four shift supervisors was ever given a copy. Further, shift supervisor Gary Ahern requested a copy from on-site supervisor Aspey but was told he was not entitled to one. Moreover, the Union points out that the Employer-Petitioner never provided shift supervisors with a written description of their job duties.

The Union contends that the shift supervisors have no authority to hire, fire or discipline security officers. Further, the shift supervisors have not recommended discipline since the Employer-Petitioner acquired the contract to provide security for the Truman Library.

Although shift supervisors have the authority to recommend an employee for hire, the Union notes that the on-site supervisor, Michael Aspey, testified that he has accepted some recommendations and rejected others.

With regard to making changes in the work schedule, the Union asserts that shift supervisors cannot make changes without Aspey's permission unless an unexpected absence is involved. When such an absence occurs, the shift supervisor must call the security officer with the most seniority first, and then work his way down the seniority list, in accordance with a provision of the collective-bargaining agreement.

The Union addressed the situation involving security officer John Bush. The Union noted that shift supervisor Gary Ahern wrote a memo to on-site supervisor Aspey

recounting the events that occurred on February 24, 2002. Ahern reported that Bush called in to say that he thought he was having a heart attack. Ahern concluded his memo by writing that he notified Aspey and “began the process of finding coverage as needed.” The Union asserts that this is evidence that shift supervisors are required to document an occurrence even when it involves an unexpected absence.

As to the transfer of Bush from one post to another, the Union notes that it was a temporary transfer in order to facilitate Bush’s ability to obtain a medical release. Moreover, Aspey testified that the incident was the only time that a shift supervisor transferred a security officer from one post to another.

Shift supervisor Ahern testified that he had very little, if any, contact with security officers with the exception of being relieved from the dispatch office to eat or go to the restroom. Moreover, security officers do not even contact a shift supervisor to let them know that everything is okay or that they are going on a break.

The Union contends that shift supervisors do not supervise security officers beyond ensuring that all posts are filled. It concedes that this is an undeniably important responsibility, but asserts that shift supervisors otherwise have very little contact with security officers.

The Union maintains that there are numerous factors that point to shift supervisors not being statutory supervisors. Thus, they wear the same uniforms as security officers and receive the same benefits except for 30 cents premium pay. They have no more authority than security officers in terms of recommending commendations for employees. Shift supervisors do not evaluate security officers’ job performance. They never fill in

for the on-site supervisor or participate in staff meetings. They receive little training beyond “shadowing” another shift supervisor for the first 6 hours of a 12-hour shift. The Union asserts that shift supervisors do not meet the definition of a supervisor under Section (11) of the Act.

d. Analysis

Section 2(3) of the Act excludes "any individual employed as a supervisor" from the Act's definition of "employee," thereby excluding supervisors from the Act's protections. Section 2(11) of the Act defines a "supervisor" as:

any individual having authority, in the interest of the employer, to hire, transfer, suspend, lay off, recall, promote, discharge, assign, reward, or discipline other employees, or responsibly to direct them, or to adjust their grievances, or effectively to recommend such action, if in connection with the foregoing the exercise of such authority is not of a merely routine or clerical nature, but requires the use of independent judgment.

Section 2(11) has been interpreted to set forth a three-part test for determining supervisory status. Employees are statutory supervisors if (1) they hold the authority to engage in any 1 of the 12 listed supervisory functions, (2) their exercise of such authority is not of a merely routine or clerical nature, but requires the use of independent judgment, and (3) their authority is held in the interest of the employer. NLRB v. Kentucky River Community Care, Inc. 532 U.S. 706, 121 S. Court. 1861, 1867, 149 L.Ed.2d 939 (2001).

The burden of proving supervisory status lies with the party asserting that such status exists. NLRB v. Kentucky River Community Care, Inc., supra; Michigan Masonic Home, 332 NLRB No. 150, slip. op. at 1 (2000). The Board has been careful not to construe the language of the statute relating to supervisory status too broadly, because once an individual is found to be a supervisor, that individual is denied the rights of

employees protected by the Act. St. Francis Medical Center-West, 323 NLRB No. 185 (1997); Hydro Conduit Corporation, 254 NLRB 433, 437 (1981). In enacting Section 2(11), Congress emphasized its intention that only truly supervisory personnel vested with genuine management prerogatives should be considered supervisors and not straw bosses, leadmen, set-up men and other minor supervisory employees. See KGW-TV, 329 NLRB No. 39, slip op. at 4 (1999); Chicago Metallic Corporation, 273 NLRB 1677, 1668 (1995), aff'd in relevant part 794 F.2d 527 (9th Cir.1986). See also Providence Hospital, 320 NLRB 717, 725 (1996), citing McCollough Environmental Services, 306 NLRB 565 (1992). When the evidence is in conflict or inconclusive with regard to particular indicia of supervisory status, the Board will not find supervisory status based on those indicia. Davis Memorial Goodwill Industries, 318 NLRB 1044 (1995); Phelps Community Medical Center, 295 NLRB 486, 490 (1989).

The task here is to determine whether the Employer has satisfied its burden by a “preponderance of credible evidence.” Star Trek: The Experience, 334 NLRB No. 29, slip op. at 6 (2001). Accordingly, any lack of evidence in the record is construed against the party asserting supervisory status. See Willamette Industries, Inc., 336 NLRB No. 59, slip op. at 1 (2001). The fact that the Petitioner has given the classification at issue the title of shift supervisor is of no consequence, as the Board has long held that a title is insufficient to establish supervisory status. See, e.g. Omnix International Corporation d/b/a Waterbed World, 286 NLRB 425 (1987).

I find that the Employer-Petitioner has failed to meet its burden of establishing that shift supervisors are statutory supervisors under the Act. The record shows that the shift supervisors receive the same benefits as security officers except for a 30 cent

premium. They wear the same uniforms as security officers. Like security officers, they can recommend commendations for employees. Shift supervisors, like security officers, can recommend employees for hire.

If an employee calls in sick, the shift supervisor follows the collective-bargaining agreement and calls employees in order of seniority to cover the position. The only example of transferring an employee involved security officer Bush who was ill and unable to work due to his condition. In that circumstance, the shift supervisor wrote a memo to the on-site supervisor and followed the established procedure for replacing him. The Employer-Petitioner also points to that single incident, which involved a temporary transfer, as evidence of a work assignment by a shift supervisor.

The record establishes that shift supervisors spend most of their time in the dispatch office watching monitors, answering telephones and monitoring the alarm system. They have virtually no contact with security officers who do not even phone in to say they are all right or that they need to take a break. The security officers rotate through posts based on a rotation schedule established by the dispatcher, a unit position.

Although the Employer-Petitioner emphasized the various provisions of the government contract concerning the duties of shift or lead supervisors, the record establishes that the shift supervisors were not informed of the contract's provisions nor were they even provided with a copy of the document.

The shift supervisors walk around the facility on the evening shift for somewhere between 15 and 30 minutes. They check that doors and lobbies are secure and that certain lights are turned on or off and sign a checklist after doing that. However, as they

walk around the facility, they have little contact with the security officers. Shift supervisor Juliana testified that he uses an equipment roster to check out guns, a radio, badges and keys to the building to security officers essentially to insure that the items are returned.

Finally, the Employer-Petitioner asserts that it would be unreasonable for on-site supervisor Aspey and part-time on-site supervisor Wycoff to be the only supervisors for the security officers working on three shifts around the clock, and that there would be an unreasonable ratio of employees to supervisors if the shift supervisors are included in the unit. Contrary to the Employer-Petitioner, I find that the security officers, who rotate through their posts and are experienced in their work, have little contact with the shift supervisors and require minimal supervision. It appears from the record that, in these circumstances, Aspey and Wycoff can supervise the security officers.

The Employer-Petitioner cites Western Colorado Power Co., 190 NLRB 564, 565 (1971) as authority for finding the shift supervisors to be statutory supervisors. There, the Board noted that the shift foremen were the senior persons in charge. They assigned work “if something out of the ordinary comes up,” assigned overtime in emergencies, arranged for replacements for employees who call in sick and could send a man home if he was drunk. They were sometimes asked to make recommendations regarding promotion. The Board found the shift foremen to be supervisors. In this matter, the shift supervisors do not assign overtime, and their arrangement for a replacement was a single incident involving security officer Bush. Moreover, the process of arranging for a replacement, if the situation arose, is dictated by seniority provisions under the collective-bargaining agreement. There is no evidence that a shift supervisor has ever sent anyone

home or has the authority to do that, and recommendations for commendations can also be made by security officers.

Based upon the record considered as a whole, I find that the shift supervisors are not statutory supervisors under the Act.

2. Part-time On-Site Supervisor Robin Wycoff

a. The Facts

Robin Wycoff works as a part-time employee at the Truman Library. He spends 50 percent of his time substituting for on-site supervisor Aspey, including covering Aspey's vacation, medical absences and training. He spends an additional 25 percent of his time substituting for shift supervisors. He substituted for the on-site supervisor for five days in August and three days in September in addition to substituting for shift supervisors.

Wycoff has the authority to recommend hiring, discharging, and disciplining of employees. He interviewed a candidate for hire when acting as on-site supervisor. Moreover, regarding the incident involving security officer Bush, Wycoff informed him that his medical documentation was inadequate under the government contract.

b. The Union's Position

The Union has maintained throughout this proceeding that Robin Wycoff is a statutory supervisor. Thus, he performs the duties of the on-site supervisor 50 percent of the time. It notes that it is undisputed that the on-site supervisor is excluded from the bargaining unit. Moreover, Aspey testified that when Wycoff substitutes for him, he

performs the on-site supervisor's job. The Union asserts that such regular and substantial time spent performing supervisory functions leads to the inescapable conclusion that Wycoff should be excluded from the bargaining unit.

c. The Employer-Petitioner's Position

Initially, the Employer-Petitioner asserted that Wycoff was not a statutory supervisor. However, in its brief the Employer-Petitioner agreed with the position of the Union, and further asserts that shift supervisors view Wycoff as a supervisor. It contends that Wycoff should be excluded from the unit.¹

d. Analysis

The parties agree that on-site supervisor Aspey has the authority to exercise the full range of duties under Section 2(11) of the Act. Accordingly, he is a supervisor within the meaning of the Act. Although Robin Wycoff is a part-time employee, 50 percent of his work consists of substituting for on-site supervisor Aspey. During those times, he exercises most of the duties listed in the on-site supervisor's job description.

I find that a substantial portion of Wycoff's work consists of the performance of supervisory functions. Therefore, I agree with the parties that Wycoff should be excluded from the collective-bargaining unit as a supervisor.

3. The appropriateness of the UC petition

¹ Juliana testified that, during negotiations, the Employer-Petitioner indicated that Wycoff could not be included in the bargaining unit. There is no evidence that would indicate that the Union opposed that position. Thus, it appears Wycoff was not included in the unit previously.

a. The Employer-Petitioner's Position

The Employer-Petitioner maintains that the Board is required to exclude supervisors from a bargaining unit with non-supervisors, citing Washington Post Co., 254 NLRB 168, 169 (1981) as support. It contends that there is no evidence in the record that the parties agreed that shift supervisors were not supervisors during negotiations for the collective-bargaining agreement. It describes testimony by shift supervisor Juliana in which he stated that he was told by Employer-Petitioner official Tom Woods, during bargaining, that he could be a member of the Union because he did not have the authority to hire, fire or discipline. The Employer-Petitioner asserts that that discussion does not determine a shift supervisor's status, and does not constitute a bargained-for agreement between the Union and Employer-Petitioner concerning the supervisory status of shift supervisors.

b. The Union's Position

The Union contends that the petition should be dismissed as inappropriately filed. It asserts that shift supervisors were included in the bargaining unit in a September 24, 2001 election, and remained in the unit during the course of collective bargaining, which resulted in a collective-bargaining agreement effective by its terms from February 1, 2002 through January 31, 2005. The Union states that the Board has held that permitting unit clarification during the course of a contract would mean that one of the parties would be able to effect a change in the composition of the bargaining unit during the contract term after it agreed to the unit's definition, citing San Jose Mercury & San Jose News,

200 NLRB 105 (1972), and Monongahela Power Co., 198 NLRB 1183 (1972), as support.

The Union notes that shift supervisor Juliana testified about a discussion during bargaining in which he questioned whether shift supervisors were properly in the unit. He stated that the Employer's president, Tom Woods, replied that since he did not have the power to hire, fire or discipline, it would be fine for Juliana to hold union membership.

The Union asserts that the Employer-Petitioner knew the responsibilities of shift supervisors at the time of the election and collective bargaining and did not contend that they should be excluded. Moreover, the Union notes that the duties of shift supervisors have not changed in the meantime. Accordingly, the Union contends that to allow the Employer-Petitioner to effect a change in the composition of the bargaining unit during the contract term after agreeing to the unit's definition would be impermissible. Thus, it asserts that unit clarification is inappropriate and that the petition should be dismissed.

c. Analysis

In Monongahela Power Company, *supra*, the Board found that the petitioner attempted to add salaried employees to a unit of hourly employees and noted that the unit placement of the individuals was made clear in the unit description contained in the current agreement, and their status had not changed since its execution. In San Jose Mercury & San Jose News, *supra*, the Board found that alleged supervisors were included within the coverage of the current collective-bargaining agreement. The Board dismissed both petitions finding that it would be disruptive to the collective-bargaining relationship

to allow one of the parties to effect a change in the definition of the bargaining unit during the contract term.

In Washington Post Co., supra, the Board noted that the Act provides specifically for the exclusion of “supervisors.” Thus, it held that it is required to exclude positions from a bargaining unit where the inclusion of those positions would violate the principles of the Act. However, the Board went on to note that the petition had been filed immediately following the election and was timely.

It is well established that the Board will not process a unit clarification petition during the term of an existing agreement which clearly defines the unit unless: (1) the petition is filed shortly after a contract is executed, (2) the unit placement issue was raised during negotiations, and (3) the parties could not reach agreement on the disputed classification and the unit clarification petitioner did not abandon its position in exchange for contract concessions. Wallace-Murray Corporation, 192 NLRB 1090 (1971). The Board’s rationale for this policy is to avoid unnecessarily disrupting established bargaining relationships. Edison Sault Electric Co., 313 NLRB 753 (1994).

I find that well established Board law compels the dismissal of the Employer-Petitioner’s petition in this case insofar as it seeks the exclusion of the shift supervisors from the unit. For example, in Edison Sault Electric Co., supra, the parties reached a collective-bargaining agreement in late October or early November 1992, and the membership ratified the contract on about November 10, 1992. Thereafter, on January 22, 1993, the employer filed a unit clarification petition in which it sought to exclude the classification of “foremen special” from the unit on the ground that they were

supervisors. The Board dismissed the petition as untimely filed because the foremen special had not been discussed at the bargaining table, the foremen special had been included in the unit for 20 years, and the employer had not raised the issue of their status until after the new contract had been ratified.

The critical factors relied on by the Board to dismiss the petition in Edison Sault Electric Co. are present here, rendering unit clarification as to the shift supervisors inappropriate. It is clear that the petition was filed during the term of the collective-bargaining agreement. Further, the petition was not filed shortly after the agreement was executed. Rather, the petition was filed on August 27, 2002, almost seven months after the agreement was executed. In addition, the bargaining unit is clearly defined. Finally, the issue of shift supervisor status was not raised during contract negotiations, but for shift supervisor Juliana's question about his status and the answer he received that he did not have the authority to hire, fire or discipline. Under such circumstances, I will dismiss the petition insofar as it seeks to exclude shift supervisors from the unit.

However, insofar as the Union seeks through this proceeding to exclude part-time on-site supervisor Robin Wycoff, in view of the record evidence that Wycoff is a statutory supervisor and the Employer-Petitioner's agreement to his supervisory status, I will clarify the unit to exclude Wycoff.

Based upon the entire record in this matter and in accordance with the discussions above, I conclude and find:

1. The hearing officer's rulings made at the hearing are free from prejudicial error and are affirmed.
2. The Employer is engaged in commerce within the meaning of the Act, and it will effectuate the purposes of the Act to assert jurisdiction in this case.
3. The petition, insofar as it seeks to clarify the existing unit to exclude shift supervisors should be dismissed. Unit clarification will be ordered to exclude part-time on-site supervisory Robin Wycoff.

ORDER

IT IS ORDERED that the petition herein be, and it hereby is, dismissed, insofar as it seeks to exclude shift supervisors from the unit. IT IS FURTHER ORDERED that the unit is clarified to exclude part-time on-site supervisor Robin Wycoff.

Under the provisions of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board, Office of the Executive Secretary, 1099 14th Street, N.W., Washington, D.C. 20570-0001. This request must be received by the Board in Washington by November 26, 2002. The request may not be filed by facsimile.

Dated: November 12, 2002

(SEAL)

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